

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of

Joint Application by)	
SBC Communications Inc.,)	
for Provision of In-Region, InterLATA)	WC Docket No. 03-167
Services in Illinois, Indiana,)	
Ohio and Wisconsin)	

COMMENTS OF MCI

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INTRODUCTION AND EXECUTIVE SUMMARY

Although it has not yet obtained section 271 approval for Michigan, SBC filed for section 271 authority in Illinois, Indiana, Ohio and Wisconsin – the remainder of the former Ameritech region – on the day after the Department of Justice again raised serious concerns about SBC’s latest Michigan application. As WorldCom, Inc. (d/b/a MCI) has explained in its Michigan filings, SBC has not yet resolved the significant problems that make section 271 authorization premature in the region. SBC could readily resolve these problems by (1) adopting a simplified line splitting process that continues to treat UNE-P customers who order line splitting as UNE-P customers, rather than customers with separate loops and ports; (2) decreasing manual processing in its line loss and billing processes and adopting appropriate metrics to assess these processes; (3) improving its change management performance, or, at a minimum, agreeing to metrics to measure that performance; and (4) agreeing to performance measurement plans with adequate remedies. But instead of fixing the known issues, SBC chose instead to immediately press for section 271 authority for the rest of the region despite its problems.

Because many of SBC’s OSS and policy issues are regionwide, MCI relies herein primarily on its explanations in the latest Michigan application. In its comments here, MCI summarizes the OSS problems at a high level, and, in the accompanying declaration of Sherry Lichtenberg, updates the Commission concerning changes in the status of these problems since MCI filed its reply comments in the Michigan proceedings.

One of the most significant of these problems is SBC’s defective line-splitting process in which SBC forces CLECs engaging in line splitting to create a new “type of customer” with a separate unbundled loop and standalone port rather than simply adding a DSL component to the

UNE-P combination. SBC's process is far more complex than that of other ILECs or that employed for SBC's own retail customers with DSL. As a result of this process, customers can migrate back to SBC more easily than they can migrate from SBC, they can obtain features as SBC retail customers that they cannot as CLEC customers, and they are forced to risk loss of dial tone both with installation of DSL service and disconnection of service, a risk they do not face as SBC retail customers. In addition, CLECs are forced to pay significantly higher costs for installation and disconnection of DSL. SBC's line-splitting process continues to significantly impede MCI's ability to compete effectively for DSL customers. As we have previously explained, MCI has launched line-splitting service nationwide, including in SBC's Midwest region, and is suffering significant problems as a result of SBC's inadequate processes that it does not face in other regions.

Similarly, SBC's billing problems extend throughout the region, and SBC makes it very difficult and time consuming to resolve billing disputes. SBC's internal billing databases appear to be inconsistent, which results in SBC billing MCI for thousands of lines for which MCI does not have any active records and does not bill any customer. Moreover, SBC still has not corrected its internal data bases to correct problems caused by its significant line loss problems during 2000 and 2001, despite numerous promises to do so. And SBC appears to be continuing to send erroneous line loss reports that lead MCI to stop billing customers for whom it continues to receive bills from SBC. In Wisconsin, despite the state commission's conclusion that SBC's processes are fine, the commission has opened up a billing investigation that has resulted in dozens of issues coming to light that need to be investigated and resolved.

SBC's change management performance continues to be severely deficient as well. Each new EDI release is beset with defects and documentation errors that harm CLEC customers and

force CLECs to make costly changes after implementing a release. SBC continues to refuse to work with CLECs to implement change requests that are important to them.

Finally, SBC does not have adequate remedy plans in each of its states to prevent backsliding once it obtains section 271 authority. SBC should adopt at least minimally acceptable remedy plans for each state before section 271 authorization is appropriate.

SBC must resolve each of these key issues prior to receiving section 271 authority.

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1	Sherry Lichtenberg	OSS

ATTACHMENTS

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2	Declaration of Sherry Lichtenberg on Behalf of MCI, <i>In re SBC, Inc. Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in Michigan</i> , WC Docket No. 03-138 (FCC filed July 2, 2003)
3	Reply Declaration of Sherry Lichtenberg on Behalf of MCI, <i>In re SBC, Inc. Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in Michigan</i> , WC Docket No. 03-138 (FCC filed July 21, 2003)
4	WI Billing Docket Issues Directory, <i>Investigation Into the Wholesale Billing Practices of Wisconsin Bell, Inc., d/b/a SBC Wisconsin</i> , Docket No. 6720-TI-183 (PSCW filed July 30, 2003)
5	August 1, 2003 E-mail from SBC's Donna Moore to MCI's Roseann Kendall
6	Joint CLEC Comments on Public Interest Concerns Relating to SBC Wisconsin's Proposed "Compromise Remedy Plan," <i>Petition of Wisconsin Bell Inc. for a Section 271 Checklist Proceeding</i> , Docket No. 6720-TI-170 (PSCW filed June 30, 2003)

TABLE OF CITATIONS

FCC Order	
<i>BellSouth Five State Order</i>	<i>In re Joint Application by BellSouth Corp. et al. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina</i> , WC Docket No. 02-150, Memorandum Opinion and Order, 17 F.C.C.R. 17595, FCC 02-260 (2002)
DOJ Evaluations	
DOJ MI II Eval.	DOJ Evaluation, <i>In re SBC, Inc. Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in Michigan</i> , WC Docket No. 03-16 (FCC filed Feb. 25, 2003)
DOJ MI III Eval.	DOJ Evaluation, <i>In re SBC, Inc. Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in Michigan</i> , WC Docket No. 03-138 (FCC filed July 16, 2003)
Other Materials	
SBC Report of Management	SBC Report of Management on UNE and UNE-P Billing Accuracy (June 17, 2003) (Joint Affidavit of Daniel Dolan and Brian Horst at Ameritech Appl. App. A, Tab 7, att. B)
Lichtenberg IL-IN-OH-WI Decl.	Declaration of Sherry Lichtenberg on Behalf of MCI (Attached hereto as Tab 1)
Lichtenberg MI III Reply Declaration	Reply Declaration of Sherry Lichtenberg on Behalf of MCI, <i>In re SBC, Inc. Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in Michigan</i> , WC Docket No. 03-138 (FCC filed July 21, 2003) (Attached hereto as Tab 3)

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COMMENTS OF MCI

Not content to first resolve its problems in Michigan, SBC is now seeking section 271 approval for the states of Illinois, Indiana, Ohio and Wisconsin as well. Since the issues in these states are largely a continuation of the problems MCI has already pointed out in Michigan, MCI hereby incorporates its filings from WC Docket 03-138, and attaches to these comments the declaration and reply declaration of Sherry Lichtenberg in the latest Michigan proceeding (attached at Tabs 2 and 3), along with a declaration in this proceeding to provide an update on the issues (attached at Tab 1).

I. LINE-SPLITTING IS DEFICIENT

SBC's line splitting processes in the region are severely deficient, as MCI has previously explained. Almost all of the deficiencies in SBC's processes stem from its decision to treat line splitting orders for UNE-P customers as orders for new loops and ports, which is a different approach than any other ILEC has taken. By forcing CLECs to disconnect the UNE-P arrangement and reconnect it as a separate Unbundled Loop and a separate Unbundled Port, SBC makes more work for all involved, raises costs, and increases the risk to the customer of loss of

dial tone, loss of features, and perhaps E911 address errors. SBC could resolve the problems described below simply by treating line splitting customers as the UNE-P customers they are.

Lichtenberg IL-IN-OH-WI Decl. ¶ 4.

Perhaps the most egregious part of SBC's process concerns its treatment of orders for disconnecting DSL for line-splitting customers. SBC's process generally requires installation of a new loop even though the customer is simply seeking to disconnect DSL on its existing line, a process that should just involve rearrangement of cross connects at the central office. The Department of Justice ("DOJ") recognized the inequity of SBC's disconnect process in its recent Michigan Evaluation, which it filed before SBC initiated its section 271 application for Illinois, Indiana, Ohio and Wisconsin. DOJ MI III Eval. at 11-12. As DOJ explained, installation of a new loop risks "a significant interruption of voice service." *Id.* at 12. It also significantly increases the cost to the CLEC of disconnecting the DSL, since the CLEC must pay for installation of a new loop even though such a loop is unnecessary. It may also force the customer to wait at home for a dispatched technician to reconnect the new circuit to the customer's inside wire. Lichtenberg MI III Reply Decl. ¶ 19. None of these problems is incurred by SBC retail customers who purchase DSL and subsequently disconnect it, as SBC removes the DSL on the existing line without installation of a new line. Lichtenberg IL-IN-OH-WI Decl. ¶ 8.

Second, SBC's process is equally flawed for line-splitting customers who migrate back to SBC. Although an SBC retail customer with DSL cannot migrate to a CLEC until the CLEC (or the customer) disconnects the DSL, SBC will migrate a CLEC line-splitting customer back to SBC without the placement of a disconnect order, making it easier for customers to migrate back to SBC than to leave SBC. Moreover, after the migration back to SBC, SBC says that it leaves

the existing loop with DSL service in place. As a result, SBC continues to bill the CLEC for the DSL loop until the CLEC places a disconnect order. This is so even though the customer already has migrated back to SBC and thus has no intention of using DSL on a second line that has no voice service. In order to send the disconnect order, the CLEC must first discern from SBC's line loss reports that a line-splitting customer has left it but the loop remains up. This will require CLECs to develop new software to read the relevant information that ostensibly is on SBC's line loss reports – a fact that was not even conveyed to CLECs until MCI raised the issue in the Michigan proceedings.¹ SBC has no similar problems when a line sharing customer migrates to a CLEC because the DSL must be disconnected first. Lichtenberg IL-IN-OH-WI Decl. ¶¶ 8-10.

Third, CLEC customers cannot include a DSL line in a “hunt group” that also contains non-DSL lines. This is particularly important for small business customers who frequently have hunting and want to include all their lines in their hunt group. MCI has previously explained how SBC's process precludes a customer with three lines (for example), including one DSL line, from setting up its phones so that a call rolls over to the third line if the first two lines are busy. By contrast, an SBC customer with DSL can include the DSL line in a hunt group. This is plainly discriminatory. Lichtenberg MI III Reply Decl. ¶ 17.

In a July 30, 2003 *ex parte* letter filed at the FCC in the Michigan proceeding, SBC suggests several possible solutions to the hunting problem. None is workable. The first solution would require the CLEC to submit orders for every line in the hunt group requesting that these lines be changed from UNE-P to UNE-ST (the standalone UNE port) with unbundled transport.

¹ In addition, SBC has also just stated that there is a software flaw that is allowing CLEC to CLEC migrations where the losing CLEC customer has DSL rather than rejecting the order.

MCI would incur significant charges for such a change on every line, and there would be a risk that each line would lose dial tone. MCI would then have to submit its line splitting order for one of the lines. This is clearly unacceptable. Lichtenberg IL-IN-OH-WI Decl. ¶ 5.

Alternatively, SBC suggests that MCI use Busy Line Transfer to emulate hunting. This too would require MCI to place separate Local Service Requests (“LSRs”) to remove hunting from existing lines, then to install Busy Line Transfer, and then to install line splitting. Moreover, there are disadvantages of using Busy Line Transfer, as compared with hunting, such as the inability readily to remove one line from the transfer group if, for example, a person with a particular line is away from the office for an extended period of time. In addition, there may be a slight delay in the call being transferred in this way compared to hunting. Also, having the calls repeatedly bounce out to the switch likely incurs extra costs that are avoided with hunting. Each of these calls would be considered local when it goes back to the central office and then gets forwarded. MCI has requested SBC to provide a comparison between hunting and Busy Line Transfer but has not received a response.² Lichtenberg IL-IN-OH-WI Decl. ¶ 6.

These problems are in addition to the other line splitting problems that MCI discussed in its Michigan comments, which remain significant: Fourth, SBC does not have a process that enables CLECs to order DSL for their customers at the same time they place their initial UNE-P migration orders, which forces CLECs to submit migration orders for UNE-P and then to submit

SBC will be updating its systems to reject these orders, but not to reject winbacks, which is of course anticompetitive. Lichtenberg IL-IN-OH-WI Decl. ¶ 7.

² SBC goes on to suggest that it would be possible to establish hunting through the bona fide request process, but this is not acceptable either. A CLEC should not have to pay for a special development through the BFR process when it simply wants what other LECs provide. Since hunting is a switch port function and the port is not changing (according to SBC), it is not clear why special development is necessary to allow hunting. Nor is it clear why SBC has suggested a BFR rather than a standard change request. In any case, SBC should have revealed these

line splitting orders. Lichtenberg MI III Reply Decl. ¶ 10. Fifth, SBC takes each line splitting order and creates four service orders from that order. This sometimes results in loss of dial tone, leads SBC to charge CLECs as if it were installing a new loop and port (even though such installation is not necessary), and makes it more difficult for CLECs to report troubles. DOJ suggested in its recent Michigan Evaluation that the four-service-order process may not be such a problem because SBC seems to have cured the lost dial tone that initially resulted from this process. But it is not yet clear that SBC has resolved the loss-of-dial-tone problem. Moreover, DOJ does not discuss the pricing or trouble ticket problems associated with this four-service-order process. *Id.* ¶¶ 14-16. The pricing issue alone is significant, as CLECs should not have to pay for installation of a new loop when no new loop is needed (and when SBC does not in fact install a new loop).

Sixth, SBC has not implemented a solution to the versioning problem that prevents CLECs from submitting line splitting orders on behalf of CLECs unless both are on the same version of EDI. SBC has agreed to two solutions for this versioning problem but neither will be implemented until at least March 2004. Lichtenberg MI III Reply Decl. ¶¶ 11-13. Seventh, SBC's process for disconnecting DSL for a line splitting customer is deficient not only because it generally requires installation of a new loop, but also because the CLEC must submit a minimum of two LSRs. If the CLEC submits two LSRs, it must submit one of the LSRs via fax and fill out a lengthy fax ordering form. The CLEC can instead choose to submit three LSRs, which enables it to submit all three LSRs electronically. But the need to submit three separate LSRs causes significant problems for the CLEC which must fill out all three LSRs and track them in its own systems. *Id.* ¶ 18.

problems at the beginning of discussions with CLECs rather than as a result of questions from

Finally, SBC's process for updating the E911 database remains a mystery. Although SBC has now transmitted two separate letters to CLECs regarding when they have responsibility for updating the E911 database, it still is unable to answer basic questions about this process in meetings with MCI. It cannot provide an example of when a CLEC would have to submit an LSR to update the E911 records (other than the strange example provided in the Accessible Letter), nor can it tell MCI what sort of LSR it would have to submit. Moreover, SBC has not provided CLECs with any visibility into the E911 database on line splitting orders, so CLECs cannot check whether the E911 database is correct for their customers. Lichtenberg MI III Reply Decl. ¶¶ 34-38. This is especially worrisome now that SBC has acknowledged making a number of errors with E911 records on AT&T orders. SBC's July 30 *ex parte* letter (WC Docket No. 03-138) at 4.

SBC's line splitting processes are clearly deficient and discriminatory, and SBC appears to have given them little thought. Every other ILEC developed much simpler processes, as did SBC for its retail customers. SBC must fix its processes before obtaining section 271 authority.

II. BILLING DEFICIENCIES CONTINUE

SBC filed its current section 271 application for Illinois, Indiana, Ohio and Wisconsin the day after DOJ recognized in its Michigan Evaluation that "persistent questions remain concerning billing accuracy." DOJ MI III Eval. at 6. SBC's billing problems are regionwide, as demonstrated by SBC's payments of millions of dollars for billing errors spread across its Midwest region, and must be resolved for the entire region before granting section 271 applications is appropriate.

the FCC. Lichtenberg IL-IN-OH-WI Decl. ¶ 7.

One overarching billing concern is that there appear to be serious discrepancies in SBC's internal databases, so that the information in SBC's lines-in-service report apparently is not consistent with other SBC data. This apparently results in charges to MCI for thousands of lines for which MCI does not have active records and so is not charging to any customers. This suggests a significant continuing problem with SBC's database maintenance that is of the same sort that led to the reconciliation in the first place. Lichtenberg MI III Reply Decl. ¶¶ 3-4. This can be clearly seen in the recent analysis that MCI has undertaken of the lines-in-service report that SBC provides to MCI. After taking into account line losses and other changes, MCI's analysis suggests that there are numerous problems with SBC's databases. On August 5 and 6, MCI formally asked SBC about the following anomalies in the information SBC provided in its April 30 lines-in-service report listing numerous lines as MCI local customers that are inconsistent with MCI's database:

- SBC's lines-in-service report lists 3,552 lines as MCI customers for which SBC bills telco to MCI, but does not report any traffic usage. While a few customers may not use their lines for extended periods of time, it is unlikely that this is true for large numbers of customers. These are all lines which SBC bills MCI, but MCI does not have in its database so does not bill any customer.³
- SBC's lines-in-service report states that 1,630 lines are MCI customers even though SBC does not bill any telco on these lines and does not report any traffic usage on the lines. These lines are not in MCI's database or are deactive.

³ Detailed analysis by MCI since the Michigan reply comments reveals that these lines on which MCI is receiving telco bills from SBC are in fact the bulk of the lines in question as a result of the lines-in-service report.

- SBC's lines-in-service report lists another 430 lines as MCI customers and reports traffic usage on the lines, even though SBC does not bill any telco to MCI for these lines. These lines are not in MCI's database or are deactive.
- One further concern about the lines-in-service report is that many of the lines on which SBC reports traffic usage are being billed to MCI as resale traffic, rather than UNE-P traffic as they should be. MCI converted all its active resale customers to UNE-P and no longer has any resale customers in the region.

Lichtenberg IL-IN-OH-WI Decl. ¶¶ 13-16.

MCI seeks to resolve these issues with SBC in a business to business context,⁴ but the critical point here is that SBC's own databases apparently have internal inconsistencies that need to be remedied, and the discrepancies between SBC's databases and MCI's databases apparently result in MCI being billed by SBC for thousands of lines that it does not bill any end user.⁵

Proceedings in Wisconsin also provide a useful illustration of the magnitude of SBC's billing issues. While the Public Service Commission of Wisconsin ultimately made a positive

⁴ MCI has resolved several issues with SBC in which SBC has agreed to make payments to MCI, including payments of interest, but inexplicably SBC has not yet made the payments it promised.

⁵ MCI does not expect the diagnostic ACIS to CABs comparison metric that SBC has proposed to implement throughout this region to capture all the inconsistencies that MCI is seeing. The proposed metric will only pick up if the information that closes to billing in ACIS matches that in CABs, after a 30 day period of time to get the order from ACIS to close to CABs. Errors that match in both databases and errors because of the long lag in closing to billing will not be picked up and thus the metric will not be useful, even if remedies were applied here, to resolve the billing inaccuracies MCI faces.

In fact, SBC in a follow-on session to its last six month review has agreed only to implement billing metrics to address the speed of its acknowledgement and responses to CLEC billing claims. Discussions of a rate table adjustment and billing accuracy metric that takes into account late billing have been put off to the upcoming six month review next month. The billing claims metric that SBC is willing to adopt carries no teeth (a low remedy, which could be as low as \$35 per miss under its compromise plan if not more than 8% of metrics for CLECs in aggregate are missed) and an exclusion from even those remedy payments that it can create

recommendation on SBC's draft section 271 application despite the billing problems raised by CLECs, it then promptly opened a billing docket to investigate the serious billing concerns raised by various CLECs who are operating in the state, and assessed the costs of that proceeding to SBC. See Notice of Proceeding and Investigation and Assessment of Costs, *Investigation Into the Wholesale Billing Practices of Wisconsin Bell, Inc., d/b/a SBC Wisconsin*, Docket 6720-TI-183 (Pub. Serv. Comm'n Wis. July 10, 2003), available at http://psc.wi.gov/pdf/ord_notc/6164.PDF. As shown in the Billing Docket Issues Directory (attached at Tab 4), CLECs have already raised 65 issues across a wide range of billing matters ranging from individual issues to all of the errors made in the CABS reconciliation process.

Finally, SBC problems with line loss notification have once again come to light. SBC is having problems both with erroneous line loss notifications being sent to CLECs and with its processes for alerting CLECs to its line loss errors. On June 3, 2003, SBC sent MCI 414 line loss notifications in error, which SBC ultimately blamed on service rep errors and now states have been remedied by an "awareness session" and by coaching the particular service rep who made the error.⁶ See August 1, 2003 e-mail from SBC to MCI (attached at Tab 5). However, SBC did not inform MCI that these line loss notifications were erroneous until July 31, when it stated that 16 of these line losses were for MCI customers who actually had not left MCI. Of course, because of SBC's problems, MCI stopped billing these customers and stopped providing customer service and support for the two months between receiving SBC's erroneous line loss notifications and learning that the line losses had been sent in error. The other 398 line loss notifications were for lines that did not belong to MCI according to SBC. MCI is attempting to

itself – CLECs with more than 30% of their claims rejected on a line item basis would not be eligible for Tier I remedies.

learn why it took so long for SBC to correct its errors, but has not yet received an adequate explanation. Lichtenberg IL-IN-OH-WI Decl. ¶ 17.

In addition, MCI asked SBC on August 6 about another 36 lines on which it received line loss notifications from SBC, but which were still included in SBC's lines-in-service report. SBC is charging telco and reporting usage on each of these lines, so it appears that the line loss notifications were in error. *Id.* ¶ 19. Further, the SBC defect discovered in late July, discussed below in the next section, also involved erroneous line loss notifications, as well as billing errors. *Id.* ¶ 18.

Until SBC's billing problems are fixed, its section 271 application must be denied.

III. CHANGE MANAGEMENT IS DEFICIENT

SBC's change management performance has worsened over time and is now severely deficient. SBC has too many defects in each release, and SBC fails to implement important changes requested by CLECs.

SBC's latest EDI release, version 6.0, shows the same problems as have beset prior releases. Soon after that release, SBC had to send out a set of documentation revisions for that release, and also announced 53 defects for that release. Lichtenberg MI III Decl. ¶¶ 75-76. SBC announced these problems even though CLECs are not yet using the release, and it is usually CLECs who find the defects in SBC's releases. CLECs are not using the release because of their experience with the significant number of problems with past releases. Indeed, as of August 5, 2003, there remain 44 defects open for release 6.0, 63 defects open for release 5.3, and 36 defects

⁶ SBC's excuse of manual errors once again highlights the importance of automated systems that can be accurately coded and do not need subsequent coaching.

open for release 5.2, each of which affects SBC's Midwest region. Lichtenberg IL-IN-OH-WI Decl. ¶ 12. This is many months after these releases were implemented.

These defects cause significant problems. For example, a defect discovered in late July in SBC's March 15 release has apparently caused at least 1400 billing errors relating to CLEC to CLEC migrations and erroneous line loss notifications. Apparently, if the winning CLEC is at Version 5.02 and the losing CLEC is at a higher version, SBC erroneously called the losing CLEC the winning CLEC and updated ACIS (and CABS and CLEC bills) incorrectly.⁷ This is another example of how the errors in ACIS may be at the root of many of SBC's billing problems. Lichtenberg IL-IN-OH-WI Decl. ¶ 18.

Defects were a concern of the Commission and the Department of Justice in the *BellSouth Five State Order* (¶ 200), where the Commission noted that the applicant had adopted corrective practices and found other encouraging developments. No such corrective practices have been adopted here. As noted, SBC's level of defects and failure to adequately test releases prior to implementation have become so severe that to MCI's knowledge no CLEC has migrated to SBC's latest version of EDI. Lichtenberg MI III Reply Decl. ¶¶ 46-51. SBC must improve its process of software development and testing – and must agree to metrics measuring its performance with respect to defects.

SBC must improve another aspect of its change management process as well. SBC must implement more CLEC-initiated change requests. As MCI has detailed, SBC implements few such changes absent regulatory pressures. Important changes that would provide very basic functionality needed by CLECs have been languishing for years. Lichtenberg MI III Reply Decl.

⁷ Beyond the obvious problems with billing and responsibility for the customer that SBC's errors would engender, there are further issues with whether customers would conclude they had been

¶¶ 50-51. SBC has not adopted performance metrics of the type this Commission pointed to in concluding that BellSouth was providing important changes as the needs of the industry evolved⁸; nor has it taken any other steps to resolve the problem. *BellSouth Five State Order* ¶¶ 182-84, 197. SBC must improve its change management process before the Commission authorizes its section 271 entry.

IV. REMEDY PLANS NEEDED TO PREVENT BACKSLIDING

Finally, for section 271 authority to be in the public interest, it is important that each state have in place a remedy plan that is sufficient to deter backsliding. Unfortunately, after years of hard work to develop remedy plans in Illinois, Indiana and Wisconsin and obtain approval from the state commissions for these plans, SBC challenged the authority of state commissions to establish these plans and the plans were set aside.⁹ CLECs are appealing the Indiana and Wisconsin decisions, but, in the interim, the only plan that is in place in these states is the so-

slammed, if the CLEC they were trying to leave believed it had just won the customer and treated the customer as new with a welcome packet.

⁸ While SBC does have some change control metrics, they are not as comprehensive as the BellSouth metrics, and areas that are covered contain loopholes. For example, its agreement to bring in a metric on software errors from SBC-Texas's plan would probably exclude most of the defects that have kept CLECs from using SBC's latest software release due to the following business rule on what the metric covers: "Software errors identified in production within two weeks of the release with no work-arounds that have a disabling affect on CLECs ability to conduct business. Significant or disabling effect on the CLEC is defined as an inability to pass to Ameritech, or receive back from Ameritech, order activity on more than 10% of the CLEC LSRs relative to normal work volumes. This impact will be viewed on a per CLEC basis, upon notification by the CLEC to the OSS Help Desk that they are impacted."

⁹ In both Indiana and Wisconsin SBC successfully challenged the commission-ordered plans, and the state commission/CLEC appeals of those decisions are currently pending: See Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin) v. Public Service Com'n of Wisconsin, No. 02-2783 (Ct. App. Wisc., Dist. I); Indiana Bell Telephone Co. v. Indiana Utility Regulatory Com'n, No. 03-1976 (7th Cir.) In Illinois, SBC appealed the remedy plan approved by the Illinois Commission in Docket 01-0120 and pressed for adoption of its compromise plan in the Illinois 271 proceeding. SBC's "compromise" plan was approved by the Commission in Docket 01-0662 on May 13, 2003. SBC's appeal of the 01-0120 order is pending.

called “compromise” remedy plan, not the plans the state commissions determined were most appropriate. The “compromise” plan was crafted by SBC and agreed to only by two CLECs.¹⁰

As explained in detail in joint CLEC comments in Wisconsin on June 30, 2003 (attached at Tab 6), the “compromise” remedy plan is deficient for many reasons. Under the compromise plan, SBC could have very poor performance and pay only minimal penalties if its performance was severely deficient for a few critical measures and acceptable for other measures. Indeed, SBC could deliberately perform poorly with respect to a few critical measures and pay only minimal penalties. Further, the plan would not detect and punish poor performance in many instances, because it only relies on statewide, aggregated results. For these reasons, the Wisconsin Commission specifically declined to endorse the “compromise” remedy plan offered by SBC, stating that it “continues to support the remedy plan as formulated in related proceedings and declines to make a determination whether SBC’s Compromise Remedy Plan is sufficient for § 271 purposes under the public interest standard.” See Determination (Phase II), *Petition of Wisconsin Bell Inc., for a Section 271 Checklist Proceeding*, Docket No. 6720-TI-170 at 30 (Pub. Serv. Comm’n Wis. July 7, 2003), available at http://psc.wi.gov/pdf/ord_notc/6178.PDF.

Moreover, the Illinois and Wisconsin plans do not even provide a way to modify performance measures, as it becomes apparent that new measures are needed. The plans should at least provide for a six month review process and commission control of the remedy plan. The Illinois and Wisconsin plans also phase out after four years, which, given SBC’s claim that the state commissions have no authority to impose such plans, may leave CLECs without any

¹⁰ The use of the term “compromise” is a misnomer given that the vast majority of CLECs across the SBC Midwest region were neither involved in the negotiation of the “compromise” remedy plan, nor have sought to adopt it.

remedy plans at all. The modified “compromise” plan SBC offers in Indiana at least has a six month review process and no four year termination date, as the Indiana Utility Regulatory Commission conditioned its section 271 approval on these modifications.

The Commission should not permit SBC to get away with its gambit of avoiding implementation of the performance plans state commissions have determined to be most appropriate. There is no doubt that this Commission can render irrelevant SBC’s challenge to performance plans by concluding that it is not in the public interest to approve SBC’s section 271 applications without the plans chosen by state commissions. It should do so – especially where, as here, the alternative is performance plans that are clearly inadequate. At a bare minimum, the FCC should require SBC to offer its modified Indiana “compromise” plan in the remaining states in the Midwest region. However, to provide more than cursory anti-backsliding protections, this Commission should send a firm message that it will not allow SBC to force state commissions and small CLECs to accept inadequate remedy plans while the robust and meaningful plans developed through considerable state commission and industry efforts are entangled in ongoing litigation.

The Ohio plan, which is different from the compromise plan, is also inadequate, for the state commission failed to adopt a state-specific plan and simply relies on the Texas plan (the shortcomings of which are set forth in the joint CLEC filing at Tab 6), without conducting any of the analysis to which it had committed and was required under the stipulations of the SBC-Ameritech merger.

Finally, SBC has not shown that it can accurately measure its performance with the metrics it does have in place. The BearingPoint test remains far from complete, and as MCI has previously explained, this alone is reason enough to reject an application.

CONCLUSION

For the foregoing reasons, SBC's section 271 application should be denied.

Respectfully Submitted,

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August 6, 2003

Certificate of Service

I, Keith L. Seat, do hereby certify that on this sixth day of August, 2003, I have electronically served a true and correct copy of MCI's Comments in WC Docket No. 03-167 on the following:

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